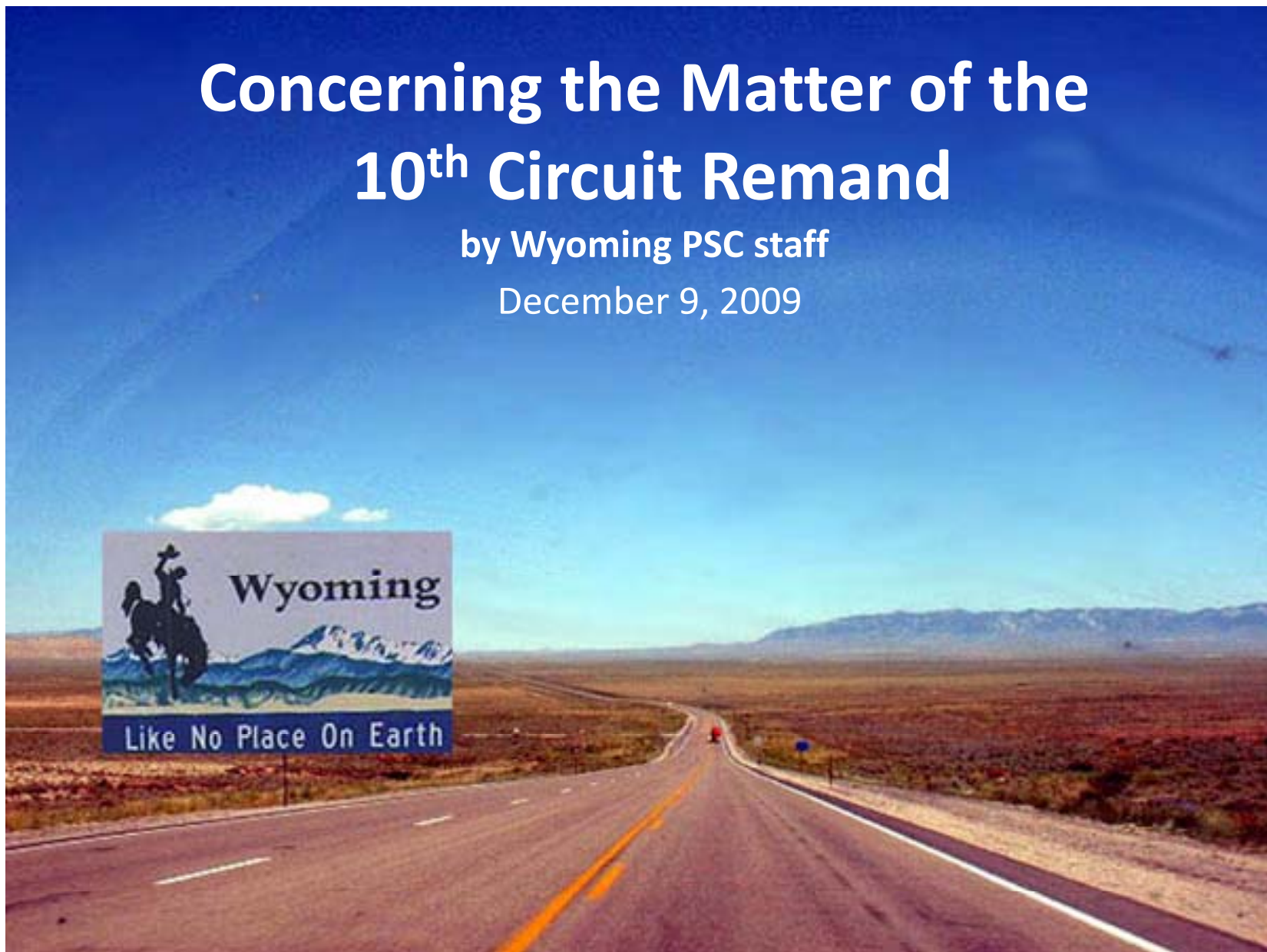


Concerning the Matter of the 10th Circuit Remand

by Wyoming PSC staff

December 9, 2009



Discussion Outline

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Background

Wyoming Public Service Commission Effort to Expand Federal Universal Service Fund (FUSF) Support for Rural Customers

- In 2008 the Wyoming Public Service Commission (PSC) joined in filing a petition for a writ of mandamus in the US Court of Appeals for the Tenth Circuit to require the FCC to define sufficiency and comparability in accordance with the principles of §254(b) of the Telecommunications Act of 1996.
- To resolve the mandamus proceeding, the FCC responded on March 6, 2009:

“The FCC has now agreed to complete this proceeding as follows.

In order to refresh the record compiled in response to the 2005 NPRM, the Commission will release a notice of inquiry no later than April 8, 2009. It will then issue a further NPRM no later than December 15, 2009. After the Commission receives and reviews the comments submitted in response to the further NPRM, it will release a final order that responds to this Court’s remand no later than April 16, 2010.



Timeline

1. January 3, 2000: WyPSC filed a petition for reconsideration of the ninth report and order in CC Docket No. 96-45, seeking deaveraging of support to non-rural carriers at the zone level, or alternatively a rural state exemption.
2. January 21, 2000: WyPSC filed an ex parte regarding its petition for reconsideration of the Commission's ninth report and order in CC 96-45.
3. March 30, 2000: WyPSC filed a petition for waiver of the FCC's targeting rules in 47 CFR §§ 54.309 and 54.311.
4. December 19, 2001: WyPSC filed a supplemental petition for reconsideration.
5. December 2002: WyPSC filed comments on the Joint Board recommended decision, telling the Wyoming story again, describing lack of comparability or sufficiency.
6. April 25, 2002: WyPSC filed reply comments.
7. January 28, 2004: WyPSC filed intervention at Tenth Circuit in Qwest v FCC, Case No. 03-9617.
8. October 2004: WyPSC filed non-rural rate comparability certification, WyPSC reporting that rates were not comparable.
9. December 21, 2004: WyPSC and Wyoming Office of Consumer Advocate filed a joint petition for supplemental federal universal service funding for Qwest.
10. September 2005: WyPSC filed non-rural rate comparability certification reporting that rates were not comparable.
11. March 27, 2006: In the matter of Federal State Joint Board on Universal Service High Cost Universal Service Support, WC Docket No. 05-337, CC Docket No. CC 96-45, WyPSC filed comments, again reminding the FCC of its Qwest II obligations.
12. December 20, 2007: WyPSC filed non-rural residential rate comparability certification, stating: "The WPSC pursued a remedy for this residential rate disparity through its request for further federal action, provided to state commissions in Part IV.D.2.e. of the Remand Order. On December 21, 2004, the WPSC, along with the Wyoming Office of Consumer Advocate, filed a Joint Petition for Supplemental Federal Universal Service Funds for Customers of Wyoming's Non-Rural Incumbent Local Exchange Carrier (Joint Petition), with the FCC. In the Joint Petition, the WPSC provided a summary of the background, circumstances and history of the WyPSC's request for additional federal universal service funds. The Joint Petition clearly demonstrates Wyoming has taken all necessary steps to achieve reasonable comparability through our actions and the application of existing federal support. In response to the Joint Petition, the FCC opened a proceeding and established a pleading cycle on February 14, 2005, in CC Docket 96-45, to address the issues raised by the WPSC. That proceeding is currently pending before the FCC."
13. April 17, 2008: Joint comments of the Maine PUC, ConnectME Authority, WyPSC, and the Vermont DPS in the matter of the Joint Board Recommendation in the Matter of High Cost Support, WC Docket No. 05-337, CC Docket No. CC 96-45, were filed, stating at page 15: "This Commission also must determine what "reasonably comparable" means pursuant to the remand of its decision to Qwest II. (footnote omitted). The Commission has yet to issue an order responding to the Tenth Circuit Court of Appeals' decision in Qwest II. It has now been over three years since the Court directed the Commission to revise key elements of its non-rural carrier high cost commenter support rules so that sufficient support would be provided to non-rural carriers. Consumers in rural states have been waiting too long for the Commission to correct its misinterpretation of the statute and provide sufficient support to those states. A legal finding as to what constitutes "reasonably comparable" rates and service and what constitutes "sufficient" support must be made before the Commission proceeds to make the functional and legal findings."
14. June 2, 2008: Joint reply comments of the Vermont PSB, Vermont DPS, Maine PUC, ConnectME Authority, and the WyPSC filed in the matter of the Joint Board Recommendation in the Matter of High Cost Support, WC Docket No. 05-337, CC Docket No. CC 96-45 stating at page 5: "The Vermont, Wyoming, and Maine state commissions, and commissions and related agencies from Nebraska, South Dakota, Kentucky, and West Virginia, have pressed the Commission to resolve the 10th Circuit remand issues for many months, and several carriers have requested waivers of universal service rules to provide company-specific fixes . . . It is imperative that the Commission adopt proper definitions and standards now to guide long term reform."
15. September 29, 2008: WyPSC filed a residential rate comparability certification for Wyoming's non-rural incumbent local exchange carrier serving in rural areas within Wyoming pursuant to 47 C.F.R. § 54.316 (CC Docket No. 96-45), stating: "Wyoming has now taken all necessary steps to achieve reasonable comparability through our actions and the application of existing federal support. In response to the Joint Petition, the FCC opened a proceeding and established a pleading cycle on February 14, 2005, in CC Docket 96-45, to address the issues raised by the WYPSC. That proceeding is currently pending before the FCC."
16. November 26, 2008: WyPSC filed comments in intercarrier compensation reform/universal service reform docket, reminding the FCC of its unfulfilled obligations to define comparability and sufficiency under Qwest II.
17. December 22, 2008: WyPSC files reply comments in ICC/USF Reform docket jointly with Vermont, Maine, Iowa, and Nebraska.
18. January 14, 2009, Petition for writ of mandamus to the FCC filed with US Court of Appeals for the 10th Circuit, In re QWEST CORPORATION, MAINE PUBLIC UTILITIES COMMISSION, VERMONT PUBLIC SERVICE BOARD, AND WYOMING PUBLIC SERVICE COMMISSION, Petitioners, No. 09-9502.
19. March 6, 2009, FCC files reply to petition for writ of mandamus: "The FCC has now agreed to complete this proceeding as follows. In order to refresh the record compiled in response to the 2005 NPRM, the Commission will release a notice of inquiry no later than April 8, 2009. It will then issue a further NPRM no later than December 15, 2009. After the Commission receives and reviews the comments submitted in response to the further NPRM, it will release a final order that responds to this Court's remand no later than April 16, 2010." page 2.
20. March 20, 2009, Reply to US Court of Appeals for the 10th Circuit, In re QWEST CORPORATION, MAINE PUBLIC UTILITIES COMMISSION, VERMONT PUBLIC SERVICE BOARD, AND WYOMING PUBLIC SERVICE COMMISSION, Petitioners, No. 09-9502.
21. April 2, 2009, WyPSC files an ex parte letter on the pending NOI on April 2, 2009.
22. April 8, 2009, Before the Federal Communications Commission, In the Matter of High-Cost Universal Service Support Federal-State Joint Board on Universal Service, WC Docket No. 05-337, CC Docket No. 96-45, NOTICE OF INQUIRY, Released: April 8, 2009.
23. May 8, 2009, WyPSC comments in NOI, WC Docket No. 05-337, CC 96-45.
24. June 8, 2009, WyPSC reply comments in NOI, WC Docket No. 05-337, CC 96-45.
25. September 18, 2009, WyPSC filed a residential rate comparability certification for Wyoming's non-rural incumbent local exchange carrier serving in rural areas within Wyoming pursuant to 47 C.F.R. § 54.316 (CC Docket No. 96-45) – again stating that rates were not comparable.



The WyPSC recommends a new funding benchmark of 125% for uniquely high cost rural universal service for non-rural carriers

- Cost based non-rural carrier rural rates for Wyoming's customers in sparsely populated rural areas are not comparable to urban rates.
- Rural Zone 2 and Zone 3 rates for customers served by Qwest, Wyoming's non-rural carrier, are the highest in the nation even after diligent and sustained state effort.
- To insure sufficient support for very sparsely populated rural high cost customers, the WyPSC recommends a new funding benchmark of 125% for high cost rural universal service for non-rural carriers.
- To target additional funding and avoid unnecessary increases to the overall size of the universal service fund, the WyPSC suggests that a new funding benchmark of 125% be applied only where high-cost factors such as local loop density are extreme.
- The WyPSC suggests that an objective measure of local loop density conditions impacting a non-rural carrier's high-cost conditions might be forward-looking data from the FCC's cost model (HCPM).
- For example, the WyPSC suggests that using the HCPM a statistical measurement of very high route miles per subscriber would be a valid way of identifying very low loop density conditions triggering the lower 125% funding benchmark.



Unique Characteristics of Providing High Cost Rural Universal Service in Wyoming



Antelope and deer outnumber people 2:1 in Wyoming

<http://ahc.uwyo.edu/onlinecollections/exhibits/pronghorn/part4.htm>

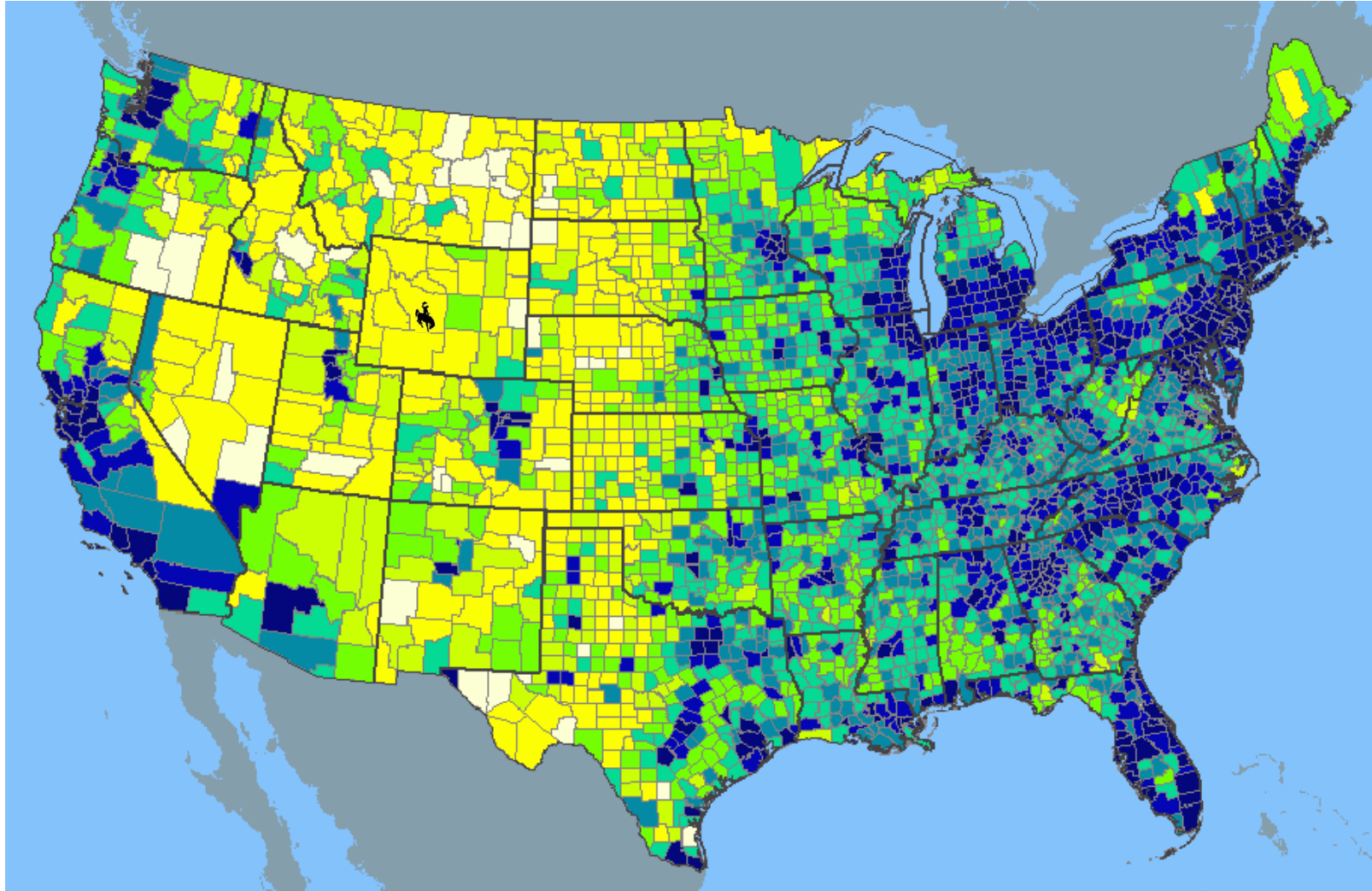
- Universal service in Wyoming comes at high cost. This is due in large part to lack of economies of scope and scale.
- Wyoming is the least populated state with only 522,830 people in 2007, up 5.9% since 2000.
- That is less than 5.4 persons per square mile in 2007.
 - Wyoming is the least densely populated state of the 48 contiguous states.
- Almost 45% of the population lives in the 10 largest cities.
 - There are no dense urban areas like most other states. Wyoming has some smaller cities and towns (the two largest cities each have a population of about 50,000), but visitors often find very small communities where railroads and highways intersect. In some areas, farming takes place, and there are several thousand ranches, some of them are quite large.
- Wyoming has vast regions of federal land (48% of the state), open spaces, rugged mountain ranges, crown jewel national parks, wilderness, desert, and lakes.

Unique Characteristics of Providing High Cost Rural Universal Service in Wyoming

- Qwest's wire center in Lusk, Wyoming (Niobrara County) has a serving area nearly three times larger than the entire state of Rhode Island. (Davis)
- However, the Lusk wire center has a local loop density of less than one access line per square mile. (Id)
- By contrast, within the Washington, D.C. city limits there are approximately 10,000 access lines per square mile. (Id)

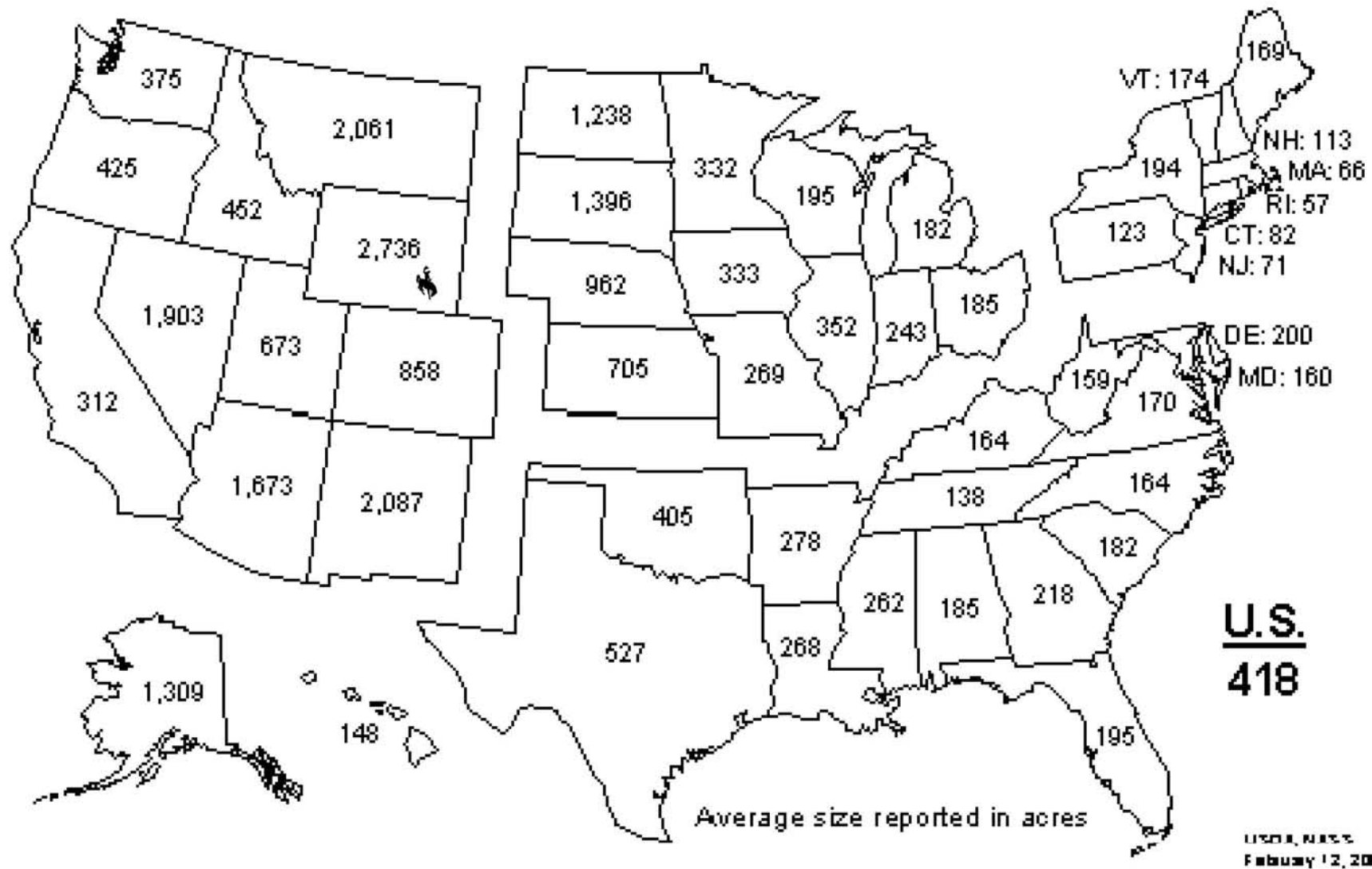


Population Density



<http://en.wikipedia.org/wiki/File:USA-2000-population-density.gif>

Average Farm Size by State, 2008



Unique Characteristics of Providing High Cost Rural Universal Service in Wyoming

- Significant changes from commonly held views about population density in Wyoming may have important implications for the provision of universal service. In part this comes from the proliferation of 40-acre ranchettes around our southeastern communities.
- According to the Wyoming State Engineer's Office, population changes in Wyoming are redistributing households from towns to exurban and rural areas, resulting in fewer households per acre. (Theobald) Almost 100,000 acres of land were subdivided into lots of 35 acres or less between 1998 and 2006. (Id) If this trend continues, 80 percent of new households in Wyoming will be on 10 to 40 acre lots by 2020. (Id) From 2000–2005, Wyoming ranked 31st in population growth nationally. (Hulme) But for 2006-2007, percent population growth in Wyoming jumped to 9th place. (Id)



An Example of Low Density Rural Residential Development



Photo by Justin Derner, USDA Agriculture Research Service, 2008 (Hulme)

State Effort

+ Rate Comparability

+ ETC Certification



Rate Comparability

Wyoming Public Service Commission Rate Comparability Analysis Residential Rate Data Pursuant to 47 C.F.R. § 54.316 Residential Customers in Rural Areas of Wyoming Served by the Non-Rural Incumbent Local Exchange Carrier (Qwest Corp.)

Rate, Surcharges, Credits and Taxes as of July 2009:

Basic Residential Access Line Rate*	\$69.35
Federal Universal Service Fund Credit**	(\$31.92)
Wyoming Universal Service Fund Credit+	(\$ 4.86)
Net Residential Rate Subject to Mandatory Surcharges and Taxes	\$32.57
Federal Subscriber Line Charge	\$ 6.50
Federal Universal Service Fund Surcharge	\$ 3.51
Wyoming Universal Service Fund Surcharge+ +	\$ 0.69
Telecommunications Relay System Surcharge	\$ 0.06
Wyoming Lifeline Program Surcharge	\$ 0.00
E911 Emergency Calling System Tax	\$ 0.75
Federal Excise Tax	\$ 1.05
Wyoming State Sales Tax	<u>\$ 1.68</u>
Total Basic Residential Service Rate to Customer	\$46.37

***ILEC rates in Wyoming are set equal to TSLRIC.**

**** Qwest must credit essential lines for all HCM support it receives**

+, ++ Wyoming has had a pro-competitive state USF since 1995



Rate Comparability Certification

	2008 Certified Rate (\$)
1 Pennsylvania Verizon A	19.63
2 Pennsylvania Verizon D	21.07
3 Hawaii Lanai	21.32
4 Oregon Verizon	22.09
5 Hawaii Molokai	22.41
6 Pennsylvania Verizon North A	22.50
7 Pennsylvania Verizon E	22.77
8 Michigan AT&T	22.86
9 Pennsylvania Verizon North D	23.76
10 Oregon Qwest low	23.86
11 Hawaii Kauai and Maui	24.31
13 New Mexico	24.46
14 Pennsylvania Verizon North E	24.84
15 Hawaii Hawaii	24.99
16 Mississippi	25.03
17 Colorado	25.54
18 Hawaii Oahu	26.52
Weighted average residential rate*	25.62
19 Oregon Qwest high	27.08
20 Wisconsin Verizon low	28.02
21 Missouri	28.16
22 Michigan Verizon	28.67
23 Virginia	28.69
24 Wisconsin AT&T low	29.05
25 Wisconsin AT&T high	29.43
26 Wisconsin Verizon high	33.33
Weighted average plus two standard deviations*	36.52
27 Wyoming	49.50
Average of Certified Rates	26.15

*Table 1.13 FCC reference book of rates, price indices, and household expenditures for telephone service, 2008

In 2008, Wyoming used the comparability benchmark of \$37.36 average plus two standard deviations found on page I-4, FCC REFERENCE BOOK of Rates, Price Indices, and Household Expenditures for Telephone Service, 2008.

Other states used \$36.52, from Table 1.13 of the same FCC REFERENCE BOOK.

A few states used another number, \$34.52, but we don't know where that number came from.



Non-Rural Carrier High-Cost Support, 2008, and Population Density

	State	High Cost Model Support	Percent	2007 Population Density Per Square Mile
1	Mississippi	\$205,116,701	58.4%	62.2
2	Alabama	\$44,807,573	12.8%	91.2
3	West Virginia	\$27,743,867	7.9%	75.3
4	Montana	\$19,268,642	5.5%	6.5
5	Kentucky	\$15,956,934	4.5%	106.8
6	Wyoming	\$13,082,438	3.7%	5.4
7	Nebraska	\$11,055,231	3.1%	23.1
8	Vermont	\$9,709,855	2.8%	67.2
9	South Dakota	\$2,451,344	0.7%	10.5
10	Maine	\$2,197,002	0.6%	42.7
Total		\$351,389,587		



ETC Certification

17+ Point Check List

- i. **unfulfilled requests for service**
 - Follow-up every year
- ii. **complaints per 1,000 handsets**
- iii. **QoS Compliance**
- iv. **Emergency Function**
- v. **Equal Access**
- vi. **FUSF in 2008**
 - audits
- vii. **Detail Actual USF spending previous year**
 - Form 1
 - Form 2
 - 1+2 9
 - Tell the story – list projects
- viii. **Supported Services**
- ix. **Lifeline Adv** (effective outreach)
 - Additional detail on number of lifeline customers, WTAP bill calculation, receipts, spent, balance
 - **DTV Adv Svc Agmt**
- x. **Doc Ubiquity**
- xi. **Map**
- xii. **FUSF YTD**
- xiii. **Detail Actual Spending YTD**
- xiv. **USAC filing**
- xv. **loop count**
- xvi. **3 Year Plan**
- xvii. **Outages**

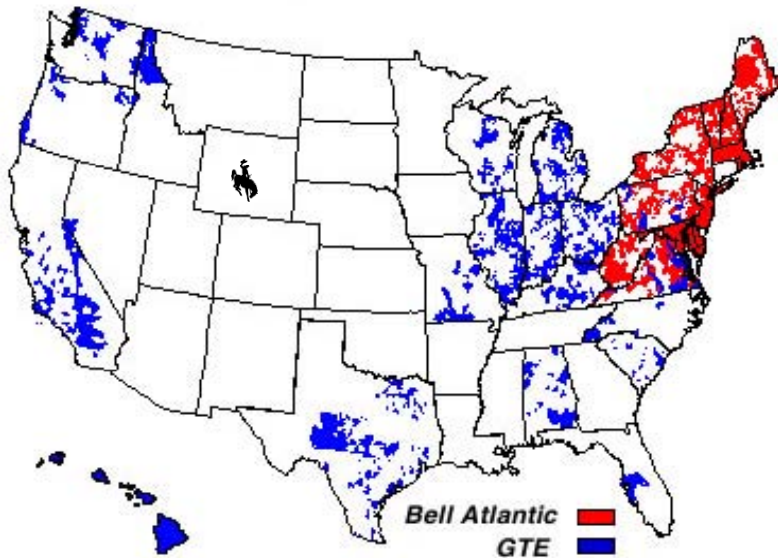


POTS and Broadband

- The Wyoming PSC is not opposed to universal service for broadband.
- However, it will be very expensive to provide rural customers in Wyoming with universal service for broadband – universal service for POTS doesn't yet satisfy the principles of §254 (b) (3) in Wyoming.
- Basic universal service in high-cost rural areas is not “a rapidly obsolescing business model.”



Wireline Services



http://verizon.com/prodserv/maps/wrline_map.html

Visited October 26, 2009

Key AT&T U.S. Service Regions

AT&T serves customers nationwide, with a concentration in 22 states.



http://www.att.com/Common/attrev1/key_att_us_service_regions_map_final.pdf

visited October 26, 2009

Fixing the Model

- The Wyoming PSC is not opposed to efforts to “fix the model.”
- However, if there is a strong desire to address the model issues, then the WyPSC urges the FCC in the strongest possible terms to confront that in separate proceedings

References

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- Hulme, D., C. Andersen, K. Parady, J. Hamerlinck, S. Lieske, I. Burke. 2009. Wyoming’s State of the Space: A Comprehensive Review of Land Use Trends in Wyoming, William D. Ruckelshaus Institute of Environment and Natural Resources. University of Wyoming-Laramie, WY, p. 6. <http://www.uwyo.edu/enr/ienr/info.asp?p=11858>
- Davis, Robert Steven, Senior Vice President Public Policy and Government Relations, Qwest Communications, International, Inc., Testimony before the US House Committee on Energy and Commerce - Subcommittee on Communications, Technology, and the Internet. Hearing on the Universal Service Fund. March 12, 2009. Page 3.



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